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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,828	12/11/2003	Joshua Pokempner	GUP-10102/29	2198
25006	7590	03/07/2006	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			CEGIELNIK, URSZULA M	
			ART UNIT	PAPER NUMBER
			3711	
DATE MAILED: 03/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,828

Applicant(s)

POKEMPNER ET AL.

Examiner

Urszula M. Cegielnik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

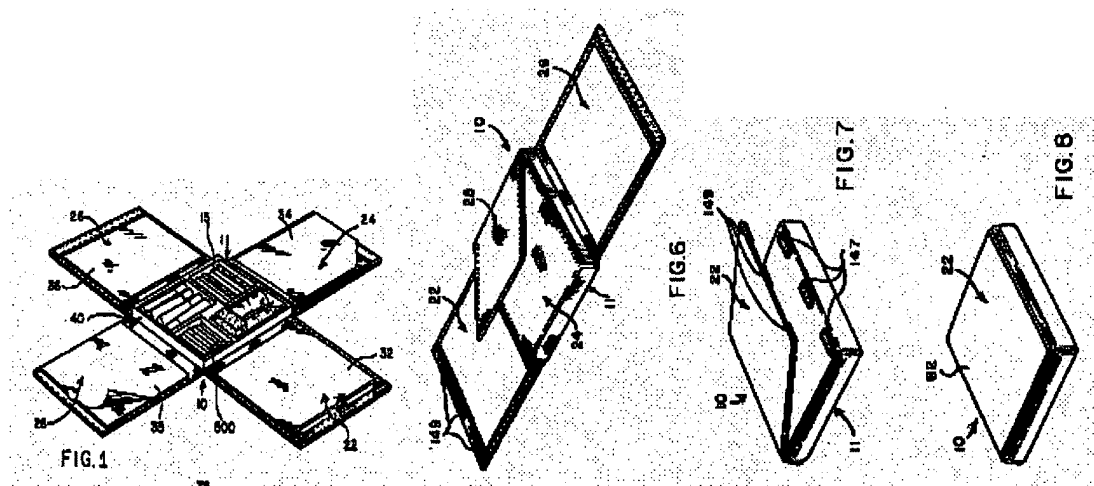
Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 57-60, 62-64, and 67-71 are rejected under 35 U.S.C. 102(b) as being anticipated by Kroop et al.



Kroop et al. disclose an activity kit comprising a box for holding a set of writing implements (500) or other materials and a pad of paper having a back panel hinged to the box in a manner allowing the pad and box to fold against one another in overlying registration; the box and pad are generally of the same dimensions; the writing implements (500) are differently colored markers, crayons, or pencils (col. 2, lines 39-40); the writing implements are of color-changing type (col. 2, lines 39-40); the pad of paper or book includes games (the game may be played by doodling on the pad of

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paper or book such as the game of HANGMAN); a fastener for holding the pad and box together (col. 7, lines 60-68 through col. 8, lines 1-3 and col. 8, lines 22-32) when folded against one another; the fastener is a hook-and-loop tab (col. 7, lines 60-68); the tab is situated on the side of the cover (see Figure 7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-8, 11-22, 25-29, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kroop et al. in view of Wilson (US Patent No. 6,164,976).

Kroop et al. disclose an activity kit comprising a box (the box 40 having side, front, and back panels, the four portions proximate reference part 40) for holding a set of writing implements (500) or other materials and a pad of paper having a separate back panel (98) hinged to the box in a manner allowing the pad and box to fold against one another in overlying registration (see Figures 6 and 8, for example); the box and pad are of generally of the same peripheral dimensions (see Figure 2, for example), the writing implements (500) are differently colored markers, crayons, or pencils (col. 2, lines 39-40); the writing implements are of color-changing type (col. 2, lines 39-20); the pad of paper or book includes games (the game may be played by doodling on the pad of paper or book such as the game of HANGMAN); a fastener for holding the pad and box together (col. 7, lines 60-68 through col. 8, lines 1-3 and col. 8, lines 22-32) when

folded against one another, the fastener is a hook-and-loop tab (col. 7, lines 60-68); the tab is situated on the side of the cover (see Figure 7).

Kroop et al. does not teach the activity kit having stickers.

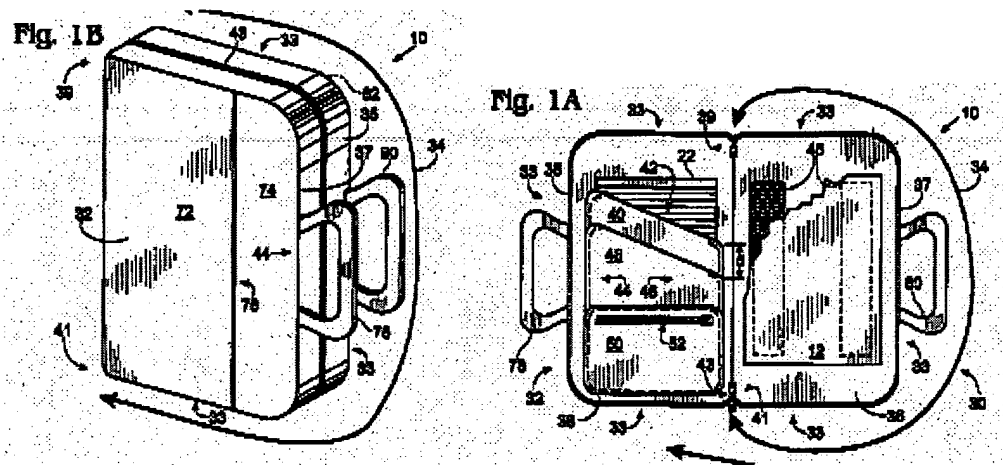
Wilson teaches an activity kit using stickers (col. 6, line 65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the activity kit with stickers as taught by Wilson, since such a modification would add greater versatility to the activity kit.

Kroop et al. disclose the claimed invention except for the specific arrangement and/or content of indicia (printed matter) set forth in the claim(s). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pad of paper with preprinted indicia since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. In re Gulack 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of = does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter e.g. preprinted indicia and the substrate e.g. pad of paper which is required for patentability.

Claims 9, 10, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 16 above, and further in view of Palmiter et al.

Kroop et al., as modified by Wilson, lacks handles on both the box and back panel of the pad, each handle having a through-hole which is aligned with the other when folded against one another in overlying registration.



Palmiter et al. disclose a portable receptacle having a pair of handles (78,80) with a through-hole therein (the inner portion of reference numbers 78,80).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide handles with through-holes as taught by Palmiter et al., since such a modification would allow the portable receptacle to be carried or transported easily.

Claims 30-33, and 35-47, 49-56, 65, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kroop et al. in view of Palmiter et al.

Kroop et al. disclose an activity kit comprising a box for holding a set of writing implements (500) or other materials and a pad of paper having a back panel hinged to

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the box in a manner allowing the pad and box to fold against one another in overlying registration; the box and pad are of generally of the same peripheral dimensions (see Figure 2, for example), the writing implements (500) are differently colored markers, crayons, or pencils (col. 2, lines 39-40); the writing implements are of color-changing type (col. 2, lines 39-20); the pad of paper or book includes games (the game may be played by doodling on the pad of paper or book such as the game of HANGMAN); a fastener for holding the pad and box together (col. 7, lines 60-68 through col. 8, lines 1-3 and col. 8, lines 22-32) when folded against one another, the fastener is a hook-and-loop tab (col. 7, lines 60-68); the tab is situated on the side of the cover (see Figure 7).

Kroop et al. do not disclose handles on both the box and back panel of the pad; each handle having a through-hole which is aligned with the other when folded against one another in overlying registration.

Palmiter et al. teach a portable receptacle having a pair of handles (78,80) with a through-hole therein (the inner portion of reference numbers 78,80).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide handles with through-holes as taught by Palmiter et al., since such a modification would allow the portable receptacle to be carried or transported easily.

Claims 34 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 30 above, and further in view of Wilson (US Patent No. 6,164,976).

Kroop et al., as modified by Palmiter et al., lack the other materials including rubber stamps, ink pads, playing cards or flash cards, stickers or temporary tattoos.

Wilson teaches an activity kit using stickers (col. 6, line 65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the activity kit with stickers as taught by Wilson, since such a modification would add greater versatility to the activity kit.

Claim 72 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kroop et al. in view of Bauman.

Kroop et al. disclose the claimed invention except for the box having a closeable flap.

Bauman teaches an activity kit in the form of a box having a closeable flap (44,45).

It would have been obvious to provide the box with a closeable flap as taught by Bauman, since such a modification would positively secure the box of the activity kit.

Response to Arguments

Applicant's arguments filed 31 May 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

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not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

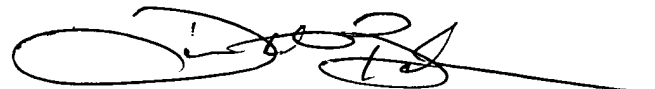
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM-2:15PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Urszula M. Cegielnik
Assistant Examiner
Art Unit 3711



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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700